IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO.10770 of 2004

The Warana Education & Anr. .. Petitioners

versus

Shri Ashok Mahadev Parit & ors... Respondents

...

Mr.N.V. Bandiwadekar for the petitioners

CORAM : D.G. KARNIK, J

DATED : 16th February 2006.

P.C.:

1. Heard learned counsel for the petitioners.

2. The petitioner takes exception to the order dated 18th October 2004 passed by the School Tribunal allowing the appeal filed by the respondent no.1 and directing his reinstatement with backwages.

3. The petitioner was appointed as an Assistant Teacher by the petitioner in its school under letter of appointment dated 14th June 1993 initially for a period of one year. The appointment was continued every year by issuing a fresh letter of appointment till June 1997. The services of the respondent no.1 were terminated in June 1997 which was challenged by him by filing an appeal before the school tribunal. The school tribunal allowed the appeal and directed reinstatement with backwages. That order is impugned in this petition.

4. Learned counsel for the petitioner states that during the pendency of an appeal before the school tribunal by an interim the services of the respondent no.1 were continued. Respondent no.1 was therefore continued in service and his service continue till today. He further states that respondent no.2 - education officer - has granted approval for the services of the respondent no.1, subject to the decision of this Court.

5. Learned counsel for the petitioner submits

that appointment of the petitioner was only temporary. Initially, the appointment was for a period of one year and every year fresh appointment letter was issued. Since the services of the petitioner were only temporary, they could be terminated any time and there could be no order of reinstatement. He refers to and relies upon two decisions of the Supreme Court in Hindustan Education Society Vs. Sk. Kaleem Sk.Gulam Nabi reported in AIR 1997 SC 2126 and Bhartiya Gramin Punarrachana Sanstha Vs. Vijay Kumar & ors. reported in (2006) 6 SCC 707. In my view, the decisions are distinguishable and not applicable to the facts of the present case. In the present case, there was not only letters of appointment but the petitioner was appointed continuously from June 1993 till June 1997. Only the management used to issue a fresh letter of appointment at the end of every academic year. Under section 5(2) of the Maharashtra Employees of Private Schools Regulation Act 1997 (for short "the Act") every assistant teacher appointed to fill a permanent vacancy is to be on probation for a period of two years only and on completion of the period of two years, would be deemed to have been confirmed. It is not disputed that there was a permanent vacancy and the petitioner was appointed in to fill up the permanent vacancy. The

Education Officer had also granted approval for the appointment of the petitioner. The approval was never revoked. Even during the pendency of the appeal before the school tribunal, the education officer has granted approval to the appointment of the respondent no.1.

6. In view of this, it is not necessary to consider the additional ground of the petitioner being a person belonging to socially backward class (OBC) which along with Rule 9 of the M.E.P.S. Rules is considered by the school tribunal.

7. In the circumstances, I see no error in the order passed by the school tribunal. The Writ Petition is rejected summarily.

(D.G. KARNIK, J)